COMMENT.

The State of Ohio in 1890 passed a law (Rev. Stat., Ohio, 1890, § 3320) requiring all railroad companies operating trains within the State to cause three of its regular trains, if so many are run, each way, to stop at a town or city having three thousand inhabitants or over, to receive and discharge passengers, and provided a penalty for failure to do so. In an action in that State to recover the penalty under the statute, the law was held constitutional and verdict given against the railroad. The Supreme Court of the United States has recently reviewed the case and affirmed the decision of the State court *(Lake Shore & M. S. Ry. Co.* v. *State of Ohio ex rel. Lawrence,* 19 Sup. Ct. Rep. 465), holding that such an act properly came within the police power of the State—that the power of the State in this respect applies not only to the health, morals, and safety of the public, but also to whatever promotes the public peace, comfort and convenience, and that the Act is a valid exercise of such power and applies to an interstate railroad incorporated by and operating through such State, the federal government not having taken any affirmative action on the subject, under its power to regulate interstate commerce. The court was not without considerable difficulty in reaching this decision, but it seems to be reasonable and just. The court cited and approved *Hennington* v. *Georgia* (163 U. S. 299; 16 Sup. Ct. 1086), where an act prohibiting the running of freight trains on Sunday was upheld as constitutional. To the objection raised that the police power of the State is restricted to regulations pertaining to the health, morals and safety of the public, and does not extend to matters pertaining to public convenience, the court, after citing numerous cases, said: "Now, it is evident that these cases had no reference to the health, morals or safety of the people of the State, but only to the public convenience. They recognized the fundamental principle that, outside of the field directly occupied by the general government under the powers granted to it by the Constitution, all questions arising within a State that relate to its internal order, or that involve the public convenience or the general good, are primarily for the determination of the State, and that its legislative enactments relating to those subjects, and which are not inconsistent with the State Constitution, are to be respected and enforced in the courts of the Union, if they do not by their operation directly entrench upon the authority of the United States, or violate some right protected by the national Constitution. The power here referred to is—to use the words of Chief Justice Shaw—the power 'to make, ordain and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the commonwealth and of the subjects of the same' *(Com.* v. *Alger,* 7 Cash. 53, 85). * * * It may be that such legislation is not within the 'police power' of a State, as those words have been sometimes, though inaccurately, used. But in our opinion, the power, whether called 'police,' 'governmental' or 'legislative,' exists in each State, by appropriate enactments not forbidden by its own Constitution or by the Constitution of the United States, to regulate the relative rights and duties of all persons and corporations within its jurisdic-

tion, and therefore to provide for the public convenience and public good. This power in the State is entirely distinct from any power granted to the general government, although, when exercised, it may sometimes reach subjects over which national legislation can be constitutionally extended. When Congress acts with reference to a matter confided to it by the Constitution, then its statutes displace all conflicting local regulations touching that matter, although such regulations may have been established in pursuance of a power not surrendered by the State to the general government. *(Gibbons* v. *Ogden,* 9 Wheat. 1, 210; *Sinnot* v. *Davenport, 22* How. *227,* 243; *Railway Co.* v. *Haber,* 169 U. S. 613, 626, 18 Sup. Ct. 488)." Upon the suggestion that the conclusion reached was not in accord with previous decisions on the point, the court reverted to *Hall* v. *DeCuir,* 95 U. S. 485; *Wabash, St. L. & P. Ry. Co.* v. *Illinois,* 118 U. S. 556, of Sup. Ct. 4, and *Illinois Cent. R. Co.* v. *Illinois,* 163 U. S. 142, 16 Sup. Ct. 1096, cases where certain State enactments were adjudged to be inconsistent with the grant of power to Congress to regulate commerce among the States, and discussed and distinguished them. Mr. Justice Shiras (with whom concurred Justice Brewer, White and Peckham) delivered a vigorous dissenting opinion, reviewing and discussing the cases at length, and strongly intimated that the majority failed to distinguish the present case from some others on the point, particularly *Illinois Cent. R. Co.* v. *Illinois, supra,* where an act, the effect of which would have been to compel an interstate train to deviate from its direct route to a small town and receive and discharge passengers before proceeding upon its course, to be unconstitutional and void as an unauthorized interference with interstate commerce.

In re Curtis et al., 91 Fed. 737, involves the question of the effect of the passage of the national bankruptcy act on State insolvency laws. The facts of the case were these: Certain copartners made an assignment under the Illinois statute, and certain creditors filed claims in accordance with the provisions of the statute. This was in August, 1898. November 1, 1898, which was the first day when such action could be taken, creditors of the copartnership brought proceedings to have the partnership adjudged bankrupt, alleging the assignment as an act of bankruptcy. The debtors answered, admitting the act of bankruptcy, but alleging an estoppel against such creditors as had filed their claims under the assignment. The court citing *Manufacturing Co.* v. *Hamilton,* 51 N. E. 529 (Mass.), *In re Bruss-Ritter Co.,* 90 Fed. 651, and *In re Rouse, Hazard & Co.,* 91 Fed. 96, *held,* that the proceedings in the State court were absolutely void and that no estoppel could arise, as the national bankruptcy law suspended the operation of all the State insolvency laws. This is the opinion of nearly all the text writers—Brandenburg on Bankruptcy, 458-9; Collier on Bankruptcy, 428-30; Bush on Bankruptcy, 408-9; Black on Bankruptcy, 271; Bump on Bankruptcy, 11th ed., 96-7; but see pp. 98-102. The Connecticut Probate Courts are, however, still taking jurisdiction of assignments for the benefit of creditors under the Connecticut laws, and in at least one case have taken jurisdiction of a suit in involuntary insolvency. Eminent Connecticut judges and lawyers believe that the State law affecting this subject is not superseded by the National Bankruptcy Law of July 1, 1898, and that proceedings thereunder can be maintained in the State courts at least so long as there are no proceedings in the same matter in the Federal courts. They rely on the cases of *Hawkins' Appeal,* 34 Conn. 548; *Shepardson's Appeal,* 36 Conn. 23; *Maltbie* v. *Hotchkiss,* 38 Conn. 80, and *Geery's Appeal,* 43 Conn. 289. Construing the United States Bankruptcy Act

of 1867. To the same effect as to the law of 1841, *Core ex parte Ziegenfuss* 2 *Ired. Law,* (N. C.) 463. *Strong* v. *Carrier,* 17 Conn. 319, 331 (as to an assignment before the bankruptcy law was in force, which was not acted on until the law no longer had any effect). The reasoning of the court in *Geery's Appeal* is that while, if the State law comes into practical conflict with the United States law, the latter must prevail, voluntary insolvency proceedings under the State law are permissible so long as there are no proceedings in the Federal court, and involuntary proceedings so long as the insolvent has committed no act of bankruptcy under the United States laws, and declines to go into bankruptcy. This last is true because such a situation is not provided for by the United States law, therefore the State law may regulate it. *Maltbie* v. *Hotchkiss* holds that the chief purpose of the insolvency laws is to regulate the distributing of assets among creditors, while a bankruptcy law also discharges the debtor. *Hawkins' Appeal* holds a voluntary insolvency proceeding valid because it would be valid at common law for the debtor to assign his property, and the State law merely regulates this, which it was probably not the intention of Congress to repeal. All admit that when the United States courts step in, their authority is paramount. *Davis* v. *Bohle et al.,* 1 Nat. Bankruptcy News 216, affirming the decision of Judge Adams in *In re Sievers,* 91 Fed. 368. Judge Adams reasons somewhat along the lines of the Connecticut lawyers. He says in part:

"It appears to me that there is a substantial difference between a proceeding under a general insolvency statute and one under a statute permitting general assignments. The one administers upon the estate of an insolvent as a proceeding in the courts, derives its potency from the law, winds up the estate judicially and discharges the debtor. Such is essentially a proceeding in bankruptcy, and is undoubtedly superseded by the act of Congress. * * * This conclusion is supported not only by ample authority, but by negative implication from the last clause of the act of July 1, 1898, which provides that "Proceedings commenced under State insolvency laws before the passage of the act shall not be affected by," etc. The other derives its potency not from the law, but from the contract or deed of the debtor, is administered under and according to the provisions of the deed, supplemented only by salutory legislative safeguards, and does not result in a discharge of the debtor from his obligations. This method of proceeding is not superseded by the act of Congress in question. *Mayer* v. *Hellman,* 91 N. S. 496; *Boese* v. *King,* 108 U. S. 379, 2 Sup. Ct. 765; *Reed* v. *McIntyre,* 98 U. S. 507." To somewhat the same effect is *State ex rel. Strohl* v. *Superior Court of King County et al.,* 56 Pac. 35, which holds that until an insolvent corporation within a State is adjudged a bankrupt under the Federal law, the right of the State court to appoint a receiver under the State law is not suspended. How far the reasoning of the court in *Geery's Appeal* may be affected by the difference between the act of 1898, the act of 1867, and by the negative inference from the last clause of the act of 1898, is problematical. One great difference between the act of 1898, the act of 1867, which is important in this connection, is that while in under the old law a general assignment for the benefit of creditors was only *evidence* of an act of bankruptcy, made so by judicial construction, under the statute of 1898 it is an *act* of bankruptcy. It seems probable that under the present law the Courts of Probate in Connecticut will continue to take jurisdiction of both voluntary and involuntary actions in insolvency until there is a decision to the contrary by the Supreme Court of Connecticut or by the Supreme Court of the United States.